Before the
Federal Communications Commission
Washington, DC 20554

In the matter of

2006 Further Review of the	)	
FCC's Broadcast Ownership Rules,	)	
and other rules pursuant to Section	)	MB Docket 06-121
to Section 202 of the	)	
Telecommunications Act of 1996	)	

To: The Commission

Comments of Thomas Desmond
On Notice of Further Review

Prepared by:
Thomas Desmond
3216 Verbena Drive
Plano, TX 75075
(972) 422-4674
tdesmond62@sbcglobal.net

The FCC has requested input from the public in several broad categories, as follows:

- Local Television Ownership Limits ("duopolies")
- Local Radio Ownership Limits
- UHF Discount
- Cross-ownership bans (television/newspaper and radio/television)
- Dual ownership of television networks ("top 4 rule")

In general, I believe that the central principle in the FCC's decision should be to increase ownership diversity wherever possible. Two key reasons are central to the idea that this represents good policy that would be in the public interest:

- Several million responses from the general public during the 2003 proceeding very clearly demonstrate that the public sees maintaining ownership diversity in the broadcast media as a high priority. These comments came from a wide range of individuals and organizations representing the full range of political opinion in this nation.
- Broadcast spectrum remains a limited resource in this country – despite arguments to the contrary, the clear evidence for this can be found in the fact that the FCC has seen multiple bidders for the overwhelming majority of FM and TV channels that have been made available through the auction process in the last several years.

Considering how this principle applies to each of the areas that the FCC is considering in the current proceeding, I reach the following conclusions:

Local Television Ownership Limits

Extending the number of markets where duopolies should be permitted is poor policy. Triopolies should not be permitted in any markets, and the currently grandfathered triopoly in the Los Angeles ADI should be ended.

Duopolies do not increase the real choices offered to local viewers, since they don't increase the number of local media voices in a meaningful way. Instead, the weaker station in a duopoly often ends up serving as a dumping ground for syndicated programming that underperformed on the primary station in a market and "repurposed" newscasts.

Instead, the FCC should consider ways in which the regulatory environment for broadcast television could be modified to promote the economic viability of a larger number of independently owned television stations, especially in medium and small markets. The FCC could examine ways in which the entry costs for a new broadcast TV station could be reduced -- perhaps, examining the ways in which concentration at the national level has made it difficult for independently owned broadcasters to acquire desirable syndicated and network programming, as well as examining the way in which the FCC's auction system for granting new construction permits raises the cost for launching new, independently owned stations. The FCC should also consider ways in which its rules could be modified in order to allow LPTV and Class A stations to more effectively compete, such as granting must-carry status on local cable systems for more of these stations.

To the extent that the FCC continues to allow duopolies to operate in larger markets, the FCC needs to plug the current loophole that exists in the national ownership limits regarding duopolies. Since the FCC only counts one station in a duopoly toward the congressionally imposed 39.6% national ownership limit, duopolies allow companies to own as many as twice the number of television stations that they would otherwise be permitted to hold. In essence, this is a regulatory incentive that actually encourages duopolies. This loophole should be closed by counting each station in a duopoly separately in calculating whether a company is complying with the national ownership limit. Since several large companies would be placed out of compliance with the national limit under this proposed change, it would be appropriate to phase this change in over several years.

Local Radio Ownership Limits

The current limits are a complete failure, in that they allow a small number of companies to dominate local radio, even in large markets that are counted as having 60 or more radio stations under FCC rules. This is caused by the fact that the FCC just counts the number of radio stations in a market without looking at how competitive those stations are within the market: a 100,000 watt Class C FM radio station serving an entire market counts the same as a 250 watt AM daytimer that covers only a small corner of the same market. When all of the powerful signals that are capable of covering a full market are owned by two or three companies, the remaining (underpowered) stations in that market are unable to provide vigorous competition to those dominant companies. The result is an oligopoly instead of true free market competition.

The solution to this problem is that the FCC should modify the way it calculates the number of radio stations in a market by weighting stations based on their ability to cover the market's population. Whichever radio station in a market covers the greatest population within its protected contour might be assigned a weighting of "1.0", with the weighting of other stations in the same market defined relative to that station. If that station's protected contour covers 3.5 million listeners, and another smaller station in the same market only covers 700,000 listeners, the latter station would be weighted at "0.2". All of these weights could be added together to achieve an aggregate number of "equivalent" radio stations for a given market, where the stations incapable of fully covering the market are appropriately discounted. Ownership limits would be based on not exceeding a fixed percentage of the weighted aggregate. This would ensure that a couple of companies could not control all of the most powerful signals in any given market, and the result could be vigorous competition that many local markets haven't seen since the mid-nineties.

The UHF Discount

In this day of electronic tuners that don't differentiate between VHF and UHF channels, the digital transition (where most stations will be on the UHF band), and cable/satellite redistribution of broadcast signals, the UHF discount is clearly an anachronism that needs to be phased out. If the discount were to be maintained, one company would potentially be allowed to own stations covering as much as 79.2% of the country! The UHF discount needs to be eliminated in order to avoid this possibility.

Furthermore, when the UHF discount is eliminated, it should be eliminated for all licensees, with no grandfathering of existing station groups. This is necessary to avoid a situation where new entrants to the industry would be forced to operate under rules placing them at a significant disadvantage against grandfathered companies.

The appropriate way to eliminate the UHF discount is to phase it out over several years. For example, the discount could be reduced from 50% to 40% on January 1, 2008; to 30% on January 1, 2009; to 20% on January 1, 2010; to

10% on January 1, 2011; and eliminated completely on January 1, 2012. This would avoid a situation where a large number of stations must be divested in a short period of time, and would allow an orderly transition to the new rules.

Cross-ownership rules and same-outlet limits should be modified, but not eliminated

I do support repeal of the newspaper-broadcast cross-ownership prohibition for the simple reason that it has never been consistently enforced. By grandfathering existing combinations in 1975, the FCC ensured that the most powerful combinations remained in place. Enforcing these rules against some players, but not against others seems inherently unfair. Since the FCC is unlikely to break up the remaining newspaper-broadcast combinations, the appropriate action is to level the playing field by eliminating this rule. It is appropriate, though, for the FCC to take newspaper ownership into account when determining the number of radio and/or television outlets that one company can own in a given market. For example, common ownership of a daily newspaper and a television duopoly in the same market should never be allowed. Where such combinations are currently grandfathered, the FCC should force the sale of either the newspaper or one of the duopoly television stations.

Television-radio cross-ownership is a more complex issue, due to the lessening of other ownership restrictions over the years. The old prohibition on such combinations resulted in an unfair playing field since existing combinations were grandfathered in. This resulted in a situation back in the 1980s wherein a new independent UHF television station could be precluded from common ownership of a same-market radio station, even though the established VHF network affiliates were all part of grandfathered radio-television combinations.

However, it needs to be remembered that the broadcast spectrum remains a limited commodity, and allowing too much common ownership of broadcast stations does limit the opportunity for new entrants to come into either the television or radio marketplace. As a result, I believe that the FCC should keep the current rules that count both radio and television stations against the maximum number of broadcast stations an entity may own in a given market. In fact, with the greater reach of most television stations, a television station should be counted as the equivalent of *two* radio stations. For example, a company in a large market might be permitted to own eight radio stations, or six radio and one television stations, or four radio and two television stations.

The Dual Network Rule

The FCC should not, under any circumstances, allow common ownership of the top 4 broadcast TV networks. Taking this further, while it is probably beyond the scope of this proceeding, the FCC should consider initiating a review of whether restrictions should be placed on the common ownership of large numbers of cable networks by a single company, or by the common ownership of broadcast and cable networks by a single company. Such a proceeding should include consideration of issues such as bundling (requiring cable systems to carry low-rated networks in return for the right to carry high-rated networks) and the use of retransmission consent to achieve carriage of new cable networks. Practices within the cable TV industry have arguably done more to damage ownership diversity in the media than has consolidation on the broadcast side of the business.

Respectfully submitted,

Thomas Desmond
3216 Verbena Drive
Plano, TX 75075
January 13, 2003